



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1993

Mr. James R. Lindley
General Counsel
Central Texas College
P.O. Box 1800
Killeen, Texas 76540-9990

OR93-722

Dear Mr. Lindley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552 (former article 6252-17a, V.T.C.S.¹). We assigned your request ID# 21664.

Central Texas College (the "college") has received a request for information concerning, *inter alia*, college employees' salaries and benefits, regulations governing alcohol and drug use, sale of college property, the college food service agreement, and college insurance liability. In addition, the requestor seeks certain legal opinions given to the college regarding employee benefits or retiree rights. You advise us that you have made most of the requested information available to the requestor. You object, however, to the release of three legal memorandums, which you have submitted to us for review, and claim that sections 552.107 and 552.111 of the act except them from required public disclosure. You also claim that a food service contract between the college and ServiceMaster is excepted from disclosure by section 552.023 of the act.²

Section 552.107 of the act excepts information if:

(1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas; or

(2) a court by order has prohibited disclosure of the information.

¹We note that the Seventy-Third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²We note that the act does not require the college to answer the requestor's factual questions. *See generally* Open Records Decision Nos. 555 (1990); 379 (1983); 347 (1982).

In Open Records Decision No. 574 (1990), this office held that section 552.107 protected information that revealed client confidences to an attorney or that revealed the attorney's legal advice, but that section 552.107 did not protect purely factual information. Each of the three memorandums submitted to us for review contains an attorney's legal advice to his or her client. Any factual information contained in these memorandums is inextricably intertwined with the attorneys' legal advice. Accordingly, we conclude that the memorandums may be withheld in their entirety under section 552.107 of the act. As we resolve this matter under section 552.107, we need not address the applicability of section 552.111.

Next, we address your assertion that the contract may be withheld under section 552.023. Section 552.023 provides a special right of access to confidential information and is not an exception to required public disclosure. Accordingly, the contract may not be withheld from public disclosure under section 552.023. Your letter to the requestor suggests that the contract is excepted from disclosure because it contains a confidentiality provision. Governmental bodies may not enter into agreements to keep information confidential unless they are expressly authorized to do so by statute. *See* Open Record Decision Nos. 514, 491 (1988); 444 (1987). It is not apparent to us that the college has the statutory authority to keep the contract confidential. We also note that ServiceMaster Management Corporation, which you notified of the request, has failed to raise any exceptions to required public disclosure. Accordingly, we conclude that the contract must be released in its entirety. *See* Open Records Decision Nos. 402, 363 (1983).³

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/GCK/rho

Ref.: ID# 21664
ID# 21695
ID# 21909

³Inasmuch as you suggest the possibility that additional information responsive to this request may come to light, we advise that this ruling applies only to the information submitted to us for review.

cc: Ms. Polly Peaks-Elmore
4403 Onion Road
Killeen, Texas 76542-3912

Service Master Company
Attn: Mr. Wayne Burke, Vice President
983 Old Eagle School Road
Wayne, Pennsylvania 19087